Chapter 4

Reward and Challenge

Enhancing Quality Administration

4.1 An important part of our mission is, through our investigation, to bring about improvement in the quality of service and standard of public administration. We achieve this by making recommendations and suggestions on conclusion of our inquiries. This year, I made 153 recommendations on conclusion of our full or direct investigations and 164 suggestions on conclusion of cases by way of RAC.

4.2 Before we finalise them, we always seek the views of the organisations concerned to ensure that the measures we suggest are practical and practicable, realistic and reasonable. Most of our recommendations and suggestions have, therefore, been accepted by the organisations concerned. We monitor their implementation and review their progress. If the organisations concerned should encounter genuine difficulties, such as unforeseen or changed circumstances, we will revisit the matter with them.

4.3 Every year our Annual Report is tabled in the Legislative Council. In this connection, the Administration submits a Government Minute to summarise and update on the actions taken by the organisations concerned in implementing our recommendations and suggestions.

4.4 The measures thus introduced by organisations have resulted in visible improvement to their operations and services. These measures fall broadly into seven areas:

(a) guidelines for clarity, consistency or efficiency in operation;

(b) better arrangements for inter-departmental co-ordination;

(c) measures for better public enquiry/complaint handling;

(d) measures for better client services;

(e) more reasonable rules and charges;

(f) clearer information to the public; and

(g) training for staff.

Examples include streamlined procedures for processing applications, stipulated timeframe or performance pledges for handling complaints, more reasonable rental for public facilities and charges for services, and timely notification of progress of action by an authority. More are detailed in **Annex 6**.

Addressing Systemic Issues

4.5 In concluding a complaint, apart from suggesting remedies where appropriate and measures for improvement, we also consider whether the problems identified stem from systemic, more deep-rooted deficiencies within the organisations concerned. If so, we will bring them to the attention of the heads of the organisations or their policy bureaux concerned and, where justified, even the central Administration. If the problem cannot be fully addressed as individual complaints, we may initiate direct investigations for more in-depth scrutiny (see **para. 2.17** of **Chapter 2** and **para. 3.20** of **Chapter 3**).

4.6 The lack of inter-departmental coordination has remained the most noticeable underlying cause for systemic problems. It is manifested in a number of issues.

Water Seepage and the Joint Office

4.7 I have commented repeatedly in my past Annual Reports on the perennial problem of water seepage and the inadequacy of Government action. Since 2006, Government has set up Joint Offices with staff from the Buildings Department ("BD") and the Food and Environmental Hygiene Department ("FEHD") to offer a "one-stop service" for complaints of seepage territory-wide. Equipped with better technical know-how, it aimed to provide a one-stop service to the public.

4.8 However, as reported last year, clearly evident deficiencies had prompted us to conduct a direct investigation into the initial operation of the Joint Office. This was completed in March 2008. Apart from deficiencies in procedures and practices, we identified several structural defects of the scheme, particularly the loose formation of the Joint Office void of a proper head and the exclusion of the Water Services Department ("WSD") from the scheme resulting in difficulties in coordination. It is also obvious that private property owners harbour unrealistic expectations of Government involvement where responsibility for remedy and repair should be their own.

4.9 Regrettably, I have to report that these two major problems not only have yet to be rectified but appear to have deteriorated. When the Joint Office was first set up, BD did assume a leading role and managed a degree of coordination. In the past year, the two departments have increasingly drifted apart and treated each other as a separate department, refraining from commenting on action by the other. More worrying was that we encountered instances where the two departments passed the complaint case to and fro because they could not agree on who should do what next. We have also received representations from staff of a department criticising action by the other in handling seepage complaints. Separately, we continued to see cases where WSD had declined to investigate despite referral by the Joint Office.

4.10 This is most unsatisfactory. It is imperative for Government to implement early the recommendations of our direct investigation, particularly that of providing the Joint Office with an effective organisational structure. Equally important is the need to define Government's role and owners' responsibility in matters such as seepage in private properties.

Street Management

4.11 Street management has been a major source of public dissatisfaction with Government and graphic example of poor inter-departmental coordination. Such problems often fall between the enforcement jurisdiction of a cross-section of departments and no single department is the obvious authority. This is not helped by the compartmentalised mentality of some of the officials. As a result, ineffective and inadequate action is taken by Government as a whole. Meanwhile, the public gets increasingly impatient as their complaints remain unresolved.

4.12 During the year, we conducted a direct investigation on the subject, particularly relating to problems caused by roadside skips, illegally parked bicycles and on-street promotional activities, and made a number of recommendations. We consider the matter best tackled within the framework of the District Administration Scheme.

District Administration

4.13 In connection with the District Administration Scheme, we noted a growing trend of District Councils ("DCs") referring public complaints to our Office; and DC Members, in their official capacity, complaining to our Office against Government departments for acting against the advice of the DC or DC sub-committees. We consider such moves to be contrary to the Administration's increasing empowerment of DCs.

4.14 Moreover, DCs have a role in advising and monitoring public administration and are themselves forums for discussion of services and matters in their locality. They have Government representatives in Council and in committees to respond there and then to their views or complainants' queries direct. Should a DC or DC Member consider our Office better placed to process a public complaint, they should advise the complainant to address us direct rather than referring cases to us. In any event, bound by our secrecy provision, we are prohibited by law to deal with a complaint *via* a third party.

4.15 Similarly, matters unresolved in DC committees or sub-committees should be escalated to the full Council. Our Office simply has no authority to delve into matters where DC Members, aggrieved in their official capacity, complain against Government departments not taking their advice.

4.16 We have addressed the Director of Home Affairs on this for assistance in clarifying our role to DCs and their Members.

Inadequate Planning

4.17 During the year, a number of new, and generally welcome, policies or programmes introduced by Government attracted widespread public criticism, especially on the confusion over implementation details. They reflected inadequate planning and gave the impression of Government wavering in its stance. In this connection, some complaints have been made to our Office.

4.18 A case in point was the Free Admission Scheme for leisure facilities in the period from July to September 2008. Its object was commendable: celebrating with the community the Olympics in China and promoting interest in sports and exercise. However, implementation was subject to much public criticism. The considerable number of complaints received by our Office prompted us to initiate a direct investigation. It was completed in March 2009 and our findings should offer useful reference for the planning and execution of similar initiatives in future.

Inflexibility and Bureaucracy

4.19 Blind adherence to set procedures is often a cause for injustice and maladministration in public offices. Efficient and effective public service must be client-centered. A positive and proactive culture of service is key to good governance and proper administration.

4.20 Take for example, a case with us. A seriously disabled elderly woman did not get renewal of her disability allowance because due to her health condition, she was unable to respond to the department's invitation to complete the necessary procedures. She passed away later and her daughter's request for the amount of disability allowance due to her mother before her demise was declined by the Social Welfare Department ("SWD") for want of formal medical assessment of the woman's health condition for the period in question. This, despite the fact that the public hospital where the woman had received treatment before her death could produce medical records showing her severe disability before death. SWD insisted on not granting the allowance retrospectively unless there was formal medical assessment. Meanwhile, the public hospital would not produce such an assessment report as the patient had already passed away. By sheer persistence, we managed to secure the hospital's agreement to produce the assessment report eventually and SWD's agreement to pay out the allowance to the woman's estate. We believe that, had SWD exercised greater flexibility and taken greater initiative in liaising with the Hospital Authority, the matter should have been resolved much earlier.

Abuse of System

4.21 I have been commenting in the past on persistent and unreasonable complainants and the abuse of the complaint system, to pursue selfish ends or for purposes of personal vendetta. This certainly should not be encouraged. On our part, we adhere firmly to our fundamental value of maintaining impartiality and objectivity: we investigate to establish the facts. Where warranted, we would comment on the complainant's behaviour. However, there are occasions when an organisation had been proper and firm but succumbing to unreasonable demands subsequently during the course of our inquiries into the complaint. Our initiating inquiries into a case does not necessarily mean we accept the complainants' allegations or see mistakes by the organisation concerned.

Code on Access to Information

4.22 Government's Code on Access to Information requires departments to provide information they hold to the public upon request, unless there are valid reasons as specified in the Code. Under The Ombudsman Ordinance, I am charged with the responsibility to inquire into complaints of breach of the Code.

4.23 This year, we received 21 Code-related complaints, compared with 16 last year, showing a gradually rising public awareness of the existence of the Code. We see a general lack of understanding of the Code continuing among Government departments: they do not seem to realise that the intent or spirit of the Code is to be as open and transparent as possible. There were still instances of departments refusing information requests without providing any reasons or with reasons not specified in the Code. On occasions, gross misunderstanding or misinterpretation of the Code or its spirit was observed.

4.24 It should be emphasised that the Code is an important vehicle to ensure open and accountable government. It aims to protect the citizen's civil and political rights and is in favour of disclosure. In this connection, I wish to quote President Obama, the newly elected President of the United States: "A democracy requires accountability, and accountability requires transparency." He furthers says, "The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears."[1] Unfortunately, such attitudes are found in some branches of our Administration. It is clear that greater efforts to promote the Code within Government are needed. To assist Government, I initiated a direct investigation on this subject in February 2009.

[1] "Memorandum for the Heads of Executive Departments and Agencies – Freedom of Information Act" issued by the Office of the Press Secretary of the White House on 21 January, 2009.

Challenges from Parties

4.25 Under The Ombudsman Ordinance, my decisions are final, whether on initiating inquiries or concluding a case. If there is fresh evidence or new perspectives, I am of course prepared to re-assess a case and review my decisions and conclusions.

Re-assessment and Review of Cases

4.26 I cannot take up a complaint where the matter is outside my jurisdiction or is restricted under The Ombudsman Ordinance. However, if a complainant provides new information in support of his allegation, we will revisit the case. After re-assessment, I may uphold my original decision or re-open the case for inquiry.

4.27 During the year we received 225 requests for re-assessment, with 64 subsequently re-opened for inquiry.

4.28 For cases that we have concluded after examination of the issue under complaint, complainants dissatisfied with our findings or conclusions may seek a review. We have specific procedures for such cases: the original investigator or, if he is not available, another investigator will examine the complainant's grounds for review and present his comments to the Chief Investigation Officer of the team. The latter will critically review the case, focusing on fresh evidence or new angles, if any, before onward submission of the request to the relevant Assistant Ombudsman for consideration. Requests for review are always scrutinised by my Deputy, before coming to me for final approval and conclusion.

4.29 This year, we received 246 requests for review. I varied my decision in seven cases after review and upheld my original decision for the rest.

Fig. 4.1

Review Cases						
Reason / Result	New evidence		New perspective		Outside jurisdiction	Total
	Yes	No	Yes	No		
Decision varied	3		4			**7**
Decision upheld		232			7	**239**
						246

4.30 Occasionally a complainant dissatisfied with the outcome of our inquiries will, in addition to requesting a review of his case, make allegations against the investigation officer for such matters as bias, lack of thoroughness or poor conduct. In such cases, the request for review and the complaint against the officer will first be passed to the head of office administration to see whether the complaint is genuinely against the conduct of my staff. If so, the head of office administration will process the complaint separately and independently (see **paras. 5.20 – 5.22** of **Chapter 5**) and report his findings to me. Meanwhile, the request for review of the complaint will be handled in parallel by the Investigation Team as described in **para. 4.21**.

4.31 However, more often than not, such allegations really arise from dissatisfaction with the findings or conclusions of our inquiries. As these findings are subject to my personal approval, such allegations are actually complaints against my decisions, not my officers. In such case, the request for review will go back to the relevant team chief for handling in accordance with the prescribed procedures.

Judicial Review

4.32 As my decision on a case is final, individuals or organisations not satisfied with my decision may request review by me or seek a judicial review by the court.

4.33 During the year, three complainants applied for judicial review against my decisions in three cases: one concerning the Judiciary, another on services of a public hospital and the third on the work of an organisation appointed by the Innovation and Technology Commission as its agent. None of the applicants succeeded in obtaining leave from the High Court. In all three applications, our Office was not required to appear before the court for hearing.

Jurisdictional Review

4.34 This review, in two parts, was completed and presented to the Administration in November 2006 and November 2007. Part I contains my recommendations for including some organisations to Schedule 1 to The Ombudsman Ordinance, relaxing certain restrictions on my investigative powers in Schedule 2 to the Ordinance and resolving some of the difficulties or uncertainties encountered by our officers in discharging their duties. Part II surveys developments in ombudsmanship worldwide and examines their possible implications on our Office. As of end of March 2009, the Administration was preparing to present their views on my review to the Legislative Council.

Overview

4.35 I see our mission as promoting good administration in the public sector. Investigation into maladministration, based on complaints or not, is our tool. We endeavour to identify underlying reasons for occurrence of gaps and mistakes and to offer practicable measures for improvement. We are pleased to note that most of our recommendations and suggestions have been accepted by Government and resulted in better administration. Nevertheless, a number of systemic issues have persisted, as noted in this Chapter. We look forward to firmer action by Government to address these matters.

4.36 We regularly review our services with a view to enhancing our ability to safeguard citizens' rights and contribute to good governance in Hong Kong. We take challenges as opportunities for continual improvement.